

California Energy Commission

TRIBAL CONSULTATION POLICY

California Energy Commission

Edmund G. Brown Jr., Governor

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California Energy Commission Tribal Consultation Policy

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The purpose of this policy is to fulfill the requirements of the California Governor's Executive Order B-10-11, the California Natural Resources Agency (Natural Resources Agency) tribal consultation policy, and Assembly Bill 52 (AB 52) (Gatto, Chapter 532, Statutes of 2014). This policy ensures effective government-to-government consultation between the California Energy Commission (Energy Commission) and California Native American tribes (tribes)ⁱ to further the Commission's mission and provide meaningful tribal input into the development of regulations, rules, policies, plans, and activities that may affect California Native American tribes. This policy is not a regulation, and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

WHEREAS Governor Brown signed Executive Order B-10-11 on September 19, 2011, directing state agencies and departments, including the Natural Resources Agency and Energy Commission, to encourage effective government-to-government cooperation, collaboration, communication, and consultation with tribes concerning the development of legislation, regulations, rules, and policies on matters that may affect tribes in California.

WHEREAS the Natural Resources Agency has adopted a Final Tribal Consultation Policy (dated November 2012) that implements Executive Order B-10-11 by:

- Recognizing tribal sovereignty over their territories and members.
- Acknowledging that tribes and tribal communities possess distinct cultural, spiritual, environmental, economic and public health interests and unique traditional cultural knowledge about California resources.
- Recognizing tribal interests concerning various kinds of state resources and the Natural Resource Agency's responsibility for managing the state's natural, historical and cultural resources.
- Defining effective government-to-government consultation as open, inclusive, regular, collaborative and implemented in a manner that is respectful, shares responsibility and provides for the free exchange of information concerning Natural Resources Agency regulations, rules, policies, programs, projects, plans, property decisions and activities.
- Identifying specific actions as follows:
 1. Outreach: identify the tribes to consult early in the planning process, invite tribes to participate in open dialogue, and exchange information per established mechanisms and do so in a repeated manner as appropriate.
 2. Tribal Liaison: establish departmentⁱⁱ tribal liaison(s) that, on behalf of a respective department, will act as central points of contact for tribes. The tribal liaison's role is to ensure that department outreach and communications are

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consistent with the Natural Resources Agency's Tribal Consultation Policy. Tribal liaisons are also to develop ongoing and regular communication with tribal representatives.

3. Tribal Liaison Committee: the Governor's Tribal Advisor's committee of agency tribal liaisons (hereafter, "Tribal Liaison Committee"), established to meet on a regular basis to coordinate agency-wide tribal consultation efforts.
4. Access to Contact Information: work with the Native American Heritage Commission (NAHC)ⁱⁱⁱ to maintain a tribal contact list.
5. Training: provide training that assists departments in implementing tribal consultation policy.

WHEREAS in 2014, the Legislature passed AB 52 (Gatto, Chapter 532, Statutes of 2014), which amended portions of the Public Resources Code, in recognition of California Native American tribal sovereignty, Native American's knowledge of tribal cultural resources, and the unique relationship of California local governments and public agencies with California Native American tribal governments. In June 2017, the Governor's Office of Planning and Research published a *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* to guide agencies in their implementation of CEQA's new consultative and procedural requirements.

THEREFORE the Energy Commission adopts the following Tribal Consultation Policy that:

1. Identifies the responsibilities and organization of the Commission
2. Identifies the Commission Tribal Liaison and Assistant Tribal Liaisons
3. Affirms Commission Tribal Liaison participation in the Tribal Liaison Committee
4. Outlines the Commission's tribal consultation process
5. Provides mechanisms for exchanging confidential information
6. Stipulates filing and disclosure requirements concerning Commission tribal communications
7. Suggests ways for fostering long term relationships
8. Lists applicable training opportunities that will assist Commission personnel in implementing the Commission Tribal Consultation Policy.

ENERGY COMMISSION RESPONSIBILITIES AND ORGANIZATION

The Energy Commission is the State's primary energy policy and planning agency. Created by the Legislature in 1974 and located in Sacramento, the Commission has a number of responsibilities, including:

- Forecasting future energy needs in California;

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- Promoting energy efficiency and conservation by setting the state's appliance and building energy efficiency standards
- Supporting public interest energy research that advances energy science and technology through research, development and demonstration programs
- Fostering the development of renewable energy resources and alternative renewable energy technologies for buildings, industry and transportation
- Certification and compliance of thermal power plants 50 megawatts or larger and designating transmission corridors
- Investing in low-carbon alternative fuels and advanced vehicle technologies
- Planning for and directing state response to energy emergencies
- Developing a biennial policy report that identifies and assesses major energy trends and issues in California and contains strategies and policy solutions to address these issues while advancing the state's energy goals

The Energy Commission implements its responsibilities through seven divisions and two key offices that can cause to consult with tribes. These organizational units are listed below:

1. Commissioners
2. Executive Office
3. Energy Assessments Division
4. Research and Development Division
5. Efficiency Division
6. Renewable Energy Division
7. Fuels and Transportation Division
8. Siting, Transmission, and Environmental Protection Division
9. Administrative Services Division

The following list provides examples of Energy Commission actions that may require tribal consultation:

- Development of regulations, rules, and policies
- Development of programs
- Development of local, regional or statewide plans
- Environmental reviews
- Power plant siting and compliance activities

ENERGY COMMISSION TRIBAL LIAISON AND ASSISTANT TRIBAL LIAISONS

The Energy Commission Tribal Liaison shall be the Deputy Director of the Siting, Transmission, & Environmental Protection (STEP) Division, or the Deputy Director's designee. Tribal Liaison responsibilities include:

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- Being the internal and external point of contact for Energy Commission tribal affairs
- Coordinating with Assistant Tribal Liaisons
- Reviewing, commenting, or signing as appropriate (determined through the coordination referenced in the previous bullet) all correspondence to tribes on behalf of Commission staff,
- Being an available participant in government-to-government meetings among tribes and the Commission
- Leading Commission initiatives for fostering long-term Commission/tribal relationships.

The Deputy Directors from each of the other divisions, or their designees, shall be Assistant Tribal Liaisons.

The Energy Commission Tribal Liaison shall coordinate among the Assistant Tribal Liaison(s) by holding quarterly meetings for the purposes of sharing information, discussing action or project-specific tribal issues, planning tribal energy summits, preparing and participating in tribal issues training venues (see “Energy Commission Tribal Consultation Training” below), and conducting “lessons learned” exercises.

ENERGY COMMISSION PUBLIC ADVISER

The Energy Commission values the participation of interested groups and the public at large in all public meetings, hearings, workshops and rulemakings. The Commission’s Public Adviser is responsible to ensure that full and adequate participation by the public occurs in Commission proceedings. The Public Adviser can be a resource for Native Americans who wish to participate in public Commission proceedings. Contact information for the Public Adviser is provided in Appendix 1 to this policy.

ENERGY COMMISSION TRIBAL LIAISON PARTICIPATION IN THE OFFICE OF THE GOVERNOR’S TRIBAL ADVISOR’S TRIBAL LIAISON COMMITTEE

The Energy Commission Tribal Liaison will be the initial point of contact for participating in the Office of the Governor’s Tribal Advisor’s Tribal Liaison Committee. It is the Commission Tribal Liaison’s responsibility to fully participate, be aware of, and attend Tribal Liaison Committee meetings, forums and functions.

The Energy Commission Tribal Liaison may delegate participatory responsibility to an Assistant Tribal Liaison when other duties or circumstances prevent the Commission Tribal Liaison’s participation.

ENERGY COMMISSION'S TRIBAL CONSULTATION PROCESS

The Governor's Executive Order B-10-11 and the Natural Resources Agency Tribal Consultation Policy require tribal consultation to be initiated when state agencies engage in legislation, regulation, rules, policy, programs, projects, plans, property decisions and activities that may affect tribes. In addition, CEQA requires tribal consultation for discretionary actions.

It is the Energy Commission's policy that its consultations with tribes will occur early and often, and be meaningful, respectful, and inclusive. The Commission and its staff will communicate with tribes in varied ways: letter, telephone, email, and in-person meetings, as appropriate. The Commission and its staff will consider and document tribal input, and communicate to tribes when a specific consultation has concluded.

INFORMATION CONFIDENTIALITY

During the course of collaboration and communication, Energy Commission staff and California Native American tribes may have the need to exchange confidential information. The Commission may have confidential information, such as applicant-prepared cultural resources reports that California Native American tribes may wish to review. California Native American tribes may have confidential information, such as cultural resources records and oral history transcripts that Commission staff may wish to review. Information deemed confidential by one or more parties in the exchange will be maintained as confidential.

FILING AND PUBLIC DISCLOSURE OF ENERGY COMMISSION TRIBAL COMMUNICATIONS

The following project-specific consultation information will be filed with the docket, or, in the event that there is no docket, filed in the administrative record of the activity:

- The Energy Commission letter to NAHC that requests the list of California Native American tribes interested in the project area and Sacred Lands File check
- The NAHC response letter (redacting any confidential information)
- Any tribal letters and Energy Commission response letters transmitted under official letterhead

Public disclosure of project-specific consultation information is governed by the requirements of the terms of the California Public Records Act (Gov. Code § 6250. et seq.).

JOINT STATE AND FEDERAL TRIBAL CONSULTATION COORDINATION

Projects that are within Energy Commission regulatory authority may also involve other federal, state, and local agencies, such as the Bureau of Land Management, Department of Energy, Western Area Power Administration, California Public Utilities Commission, and the California Department of Fish and Wildlife. The coordination of federal and state tribal consultation provides an efficient use of resources, efficient use of time, and can be beneficial in streamlining tribal and agency communication. However, each agency is subject to its own laws, regulations and policies, including tribal consultation orders, memoranda, and policies, with which the respective agencies must comply.

FOSTERING LONG TERM ENERGY COMMISSION/TRIBAL RELATIONSHIPS

In addition to project and action consultations, the Energy Commission wishes to foster long term positive relations with California Native American tribes and may engage in the following activities.

- Convene short-term tribal task forces
- Host or co-host State-federal-tribal energy summits
- Enter into long-term dialogue with tribes on how best to consult with tribes as well as facilitate consultations, information exchange, and technical assistance

ENERGY COMMISSION TRIBAL CONSULTATION TRAINING

From time to time Energy Commission staff will benefit from training opportunities that may enhance Commission staff performance pursuant to this policy. Such trainings may include the following:

- Various “Tribal Consultation” trainings provided by other state or federal governments, or private sector training institutions
- Tribal cultural resources, sacred sites and traditional cultural property training
- Commission staff-generated Tribal trainings

APPENDIX 1

CONTACT INFORMATION FOR ENERGY COMMISSION TRIBAL LIAISON AND PUBLIC ADVISER

ENERGY COMMISSION TRIBAL LIAISON

Name: Thomas Gates, Designated Tribal Liaison for the California Energy Commission

Title: Supervisor, Cultural Resources Unit, Siting, Transmission, and Environmental Protection Division

Phone: 916/654-5008

Email: thomas.gates@energy.ca.gov

PUBLIC ADVISER'S OFFICE

Name: Alana Matthews

Title: Public Adviser

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ENDNOTES

ⁱ See definition at Public Resources Code, section 21073.

ⁱⁱ The Natural Resources Agency's policy defines department as "any department, board, commission, council or conservancy subject to [gubernatorial] executive control."

ⁱⁱⁱ The Native American Heritage Commission maintains a list of contacts among California Native American tribes for the purposes of Chapter 905 of the Statutes of 2004 and the California Environmental Quality Act. ' "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission' (Public Resources Code, § 21073).

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